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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

APS&EE, LLC, a limited liability company,)
Plaintiff,)
v.)
IOVATE HEALTH SCIENCES U.S.A., INC.,)
a corporation, WALMART, INC., a)
corporation, and DOES 1 through 100,)
inclusive,)
Defendants.)

CASE NO. 24STCV25370

[PROPOSED] CONSENT JUDGMENT

Judge: Hon. Bradley S. Phillips
Dept.: 26
Compl. Filed: October 1, 2024

Unlimited Jurisdiction

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1 **1. RECITALS**

2 **1.1 The Parties**

3 **1.1.1** This Consent Judgment (“Consent Judgment”) is entered into by and
4 between APS&EE, LLC (“Plaintiff”) and IOVATE HEALTH SCIENCES U.S.A. INC.
5 (misidentified as IOVATE HEALTH SCIENCES U.S.A., INC.) (“Defendant”). Plaintiff and
6 Defendant shall hereinafter collectively be referred to as the “Parties”.

7 **1.1.2** APS&EE is an organization based in California with an interest in
8 protecting the environment, improving human health and the health of ecosystems, and
9 supporting environmentally sound practices, which includes promoting awareness of exposure to
10 toxic chemicals and reducing exposure to hazardous substances found in consumer products.

11 **1.1.3** Plaintiff alleges that Defendant is a person in the course of doing business
12 as the term is defined in California *Health & Safety Code* section 25249.6 et seq. (“Proposition
13 65”).

14 **1.2 Allegations**

15 **1.2.1** Plaintiff alleges that Defendant sold Purely Inspired Organic Greens With
16 Superfood Blend, including but not limited to 6-31656-70883-7 (hereinafter, the “Products”), in
17 the State of California causing users in California to be exposed to hazardous levels of Lead
18 without providing “clear and reasonable warnings”, in violation of Proposition 65. Lead is
19 potentially subject to Proposition 65 warning requirements because it is listed as known to cause
20 cancer and birth defects or other reproductive harm.

21 **1.2.2** On July 18, 2024, Plaintiff sent a Sixty-Day Notice of Violation (the
22 “Notice”) to Defendant and Walmart, Inc., as well as the various public enforcement agencies
23 regarding the alleged violation of Proposition 65 with respect to the Products. On October 1,
24 2024, Plaintiff, acting in the public interest, filed the instant action (the “Complaint”) in the
25 Superior Court for the County of Los Angeles, alleging violations of Proposition 65. On March
26 20, 2025, Plaintiff sent a Supplemental Sixty-Day Notice of Violation (the “Supplemental
27 Notice”) to Defendant, Walmart, Inc., and Nutra Blend Foods, LLC, as well as the various public
28 enforcement agencies regarding the alleged violation of Proposition 65 with respect to the

1 Products. The Notice and Supplemental Notice shall hereinafter collectively be referred to as the
2 “Notices”.

3 **1.3 No Admissions**

4 Defendant denies all allegations in Plaintiff’s Notices and Complaint and maintains that
5 the Products have been, and are, in compliance with all laws, and that Defendant has not violated
6 Proposition 65. This Consent Judgment shall not be construed as an admission of liability by
7 Defendant but to the contrary as a compromise of claims that are expressly contested and denied.
8 However, nothing in this section shall affect the Parties’ obligations, duties, and responsibilities
9 under this Consent Judgment.

10 **1.4 Compromise**

11 The Parties enter into this Consent Judgment in order to resolve the controversy
12 described above in a manner consistent with prior Proposition 65 settlements and consent
13 judgments that were entered in the public interest and to avoid prolonged and costly litigation
14 between them.

15 **1.5 Jurisdiction and Venue**

16 For purposes of this Consent Judgment only, the Parties stipulate that the above-entitled
17 Court has jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper
18 in Los Angeles County, and that this Court has jurisdiction to enter and enforce the provisions of
19 this Consent Judgment pursuant to California Code of Civil Procedure Section 664.6 and
20 Proposition 65.

21 **1.6 Effective Date**

22 The “Effective Date” shall be the date this Consent Judgment is approved and entered by
23 the Court.

24 **2. INJUNCTIVE RELIEF**

25 **2.1 Reformulation Standard**

26 As of the Effective Date, Defendant shall not sell, distribute, or cause the Products to be
27 offered for sale in California unless: (a) the Products expose a person to less than 0.5 micrograms
28 of lead per day based on the recommended Daily Serving as calculated below in Section 2.2, or

(b) the Products are distributed, sold, or offered for sale with a clear and reasonable warning as described below in Section 2.3.

2.2 Exposure Calculation

2.2.1 A “Daily Serving” (for purposes of determining Proposition 65 compliance for chemicals present in the Products) shall be defined by the serving size set forth on the label of the Products under "Nutrition Facts", "Supplement Facts", or equivalent. If the label, package, or Product display page on the internet¹ do not recommend a number of daily servings, then the number of daily servings shall be one.

2.2.2 The daily exposure shall be calculated by using the following formula: micrograms of lead per gram, multiplied by grams of Product per serving, multiplied by servings of the Product per day.

2.3 Proposition 65 Warnings

Whenever a clear and reasonable warning is required under Section 2.1, Defendant shall use one of the following options:

Option 1

WARNING [*or* **CA WARNING** *or* **CALIFORNIA WARNING**]:

Consuming this product can expose you to Lead, which is known to the State of California to cause [cancer and] birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov/food.

Option 2

WARNING [*or* **CA WARNING** *or* **CALIFORNIA WARNING**]: Risk of [cancer and] reproductive harm from exposure to lead. See www.P65Warnings.ca.gov/food.

or

¹ The “Product display page on the internet” applies to Products purchased therefrom, not to Products purchased elsewhere, such as a brick-and-mortar retail store.

WARNING [*or CA WARNING or CALIFORNIA WARNING*]: Can expose you to lead, a [carcinogen and] reproductive toxicant. See www.P65Warnings.ca.gov/food.

Option 3 (for Product manufactured and labeled before January 1, 2028)

WARNING: [Cancer and] Reproductive Harm -www.P65Warnings.ca.gov.

If the daily exposure for the Product exceeds 15 micrograms of lead, where daily exposure is determined pursuant to Section 2.2, Defendant shall include the phrase “cancer and” or “carcinogen and” in the warning.

Nothing in this Agreement shall prevent Defendant from modifying any warning contained in Option 1 or 2 to disclose the presence of additional chemicals, if Defendant determines that such disclosure is appropriate or required.

Under Option 3, the warning shall be accompanied by a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the label for the product is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word “WARNING”.

Each warning shall be provided on the Product label, set off from other surrounding information, enclosed in a box. Additionally, if the Product contains consumer information in a foreign language, the warning must be provided in the foreign language. The Products shall carry said warning on each label with such conspicuousness as compared with other words, statements or designs as to render it likely to be read and understood by an ordinary consumer prior to sale. A Product that is sold by Defendant on the internet to persons located in California shall also provide the warning message to Californians by a clearly marked hyperlink on the product display page, or otherwise prominently displayed to the California purchaser before the purchaser completes his or her purchase of the Product. For Products that Defendant provides for a downstream entity to sell on the internet to persons located in California, Defendant shall comply with 27 CCR section 25600.2(b) and include an instruction that the entity comply with the warning requirements of this section.

1 **3. PAYMENTS**

2 **3.1 Civil Penalty Pursuant To Proposition 65**

3 In settlement of all claims referred to in this Consent Judgment, Defendant shall pay a
4 total civil penalty of one thousand five hundred dollars (\$1,500.00) to be apportioned in
5 accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$1,125.00)
6 for State of California Office of Environmental Health Hazard Assessment (“OEHHA”), and the
7 remaining 25% (\$375.00) for Plaintiff.

8 Defendant shall issue these payments collectively as part of the total payment described
9 below in Section 3.2 via wire transfer to Law Offices of Lucas T. Novak. After receipt of the
10 wire transfer, Law Offices of Lucas T. Novak shall be responsible for forwarding the respective
11 payments to OEHHA and APS&EE.

12 **3.2 Reimbursement Of Plaintiff’s Fees And Costs**

13 Defendant shall reimburse Plaintiff’s reasonable experts’ and attorney’s fees and costs
14 incurred in prosecuting the instant action for all work performed through execution and approval
15 of this Consent Judgment, in the amount of thirteen thousand dollars (\$13,000.00). Accordingly,
16 Defendant shall remit total payment via wire transfer to Law Offices of Lucas T. Novak in the
17 amount of fourteen thousand five hundred dollars (\$14,500.00), which includes the civil penalty
18 described in Section 3.1, within five (5) business days of the Effective Date. Wire instructions
19 have been exchanged between the Parties.

20 **4. RELEASES**

21 **4.1 Plaintiff’s Release Of Defendant**

22 Plaintiff, acting in its individual capacity, and in the public interest, in consideration of
23 the promises and monetary payments contained herein, hereby releases Defendant, its parents,
24 subsidiaries, affiliates, shareholders, directors, members, officers, employees, agents,
25 manufacturers including, but not limited to, Nutra Blend Foods, LLC, attorneys, successors and
26 assignees, and Defendant’s downstream distributors, retailers, and franchisees, including but not
27 limited to Walmart, Inc. (all of the foregoing, collectively “Released Parties”), from any alleged
28 Proposition 65 violation claims asserted in Plaintiff’s Notices or Complaint regarding failure to

1 warn about Lead exposure from the Products sold by Defendant before and up to the Effective
2 Date. Within five (5) business days after receipt of full payment from Defendant as described in
3 Section 3 above, Plaintiff shall file a request for dismissal with prejudice of Walmart, Inc.

4 **4.2 Defendant's Release Of Plaintiff**

5 Defendant, by this Consent Judgment, waives all rights to institute any form of legal
6 action against Plaintiff, its shareholders, directors, members, officers, employees, attorneys,
7 experts, successors and assignees for actions or statements made or undertaken, whether in the
8 course of investigating claims or seeking enforcement of Proposition 65 against Defendant in
9 this matter. If any Released Party should institute any such action, then Plaintiff's release of said
10 Released Party in this Consent Judgment shall be rendered void and unenforceable.

11 **4.3 Waiver Of Unknown Claims**

12 Each of the Parties acknowledges that it is familiar with Section 1542 of California Civil
13 Code which provides as follows:

14 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
15 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
16 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
17 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
18 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
19 DEBTOR OR RELEASED PARTY.

20 Each of the Parties waives and relinquishes any right or benefit it has or may have under
21 Section 1542 of California Civil Code or any similar provision under the statutory or non-
22 statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights
23 and benefits. The Parties acknowledge that each may subsequently discover facts in addition to,
24 or different from, those that it believes to be true with respect to the claims released herein. The
25 Parties agree that this Consent Judgment and the releases contained herein shall be and remain
26 effective in all respects notwithstanding the discovery of such additional or different facts.

27 **5. COURT APPROVAL**

28 Upon execution of this Consent Judgment by all Parties, Plaintiff shall file a noticed
Motion for Approval and Entry of Consent Judgment in the above-entitled Court. This Consent
Judgment is not effective until it is approved and entered by the Court. It is the intention of the

Parties that the Court approve this Consent Judgment, and in furtherance of obtaining such approval, the Parties and their respective counsel agree to mutually employ their best efforts to support the entry of this agreement in a timely manner, including cooperating on drafting and filing any papers in support of the required motion for judicial approval.

6. SEVERABILITY

Should any part or provision of this Consent Judgment for any reason be declared by a Court to be invalid, void or unenforceable, the remaining portions and provisions shall continue in full force and effect.

7. GOVERNING LAW

The terms of this Consent Judgment shall be governed by the laws of the State of California. This Consent Judgment is entered into in the State of California and may only be enforced in the State of California.

8. NOTICES

All correspondence and notice required to be provided under this Consent Judgment shall be in writing and delivered personally or sent by first class or certified mail addressed as follows:

TO DEFENDANT:	TO PLAINTIFF:
David W. Reid, Esq. Pacific Trial Attorneys 4100 Newport Place Drive, Suite 800 Newport Beach, CA 92660	Lucas T. Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069

9. COUNTERPARTS

This Consent Judgment may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute the same document. Execution and delivery of this Consent Judgment by e-mail, facsimile, or other electronic means shall constitute legal and binding execution and delivery. Any photocopy of the executed Consent Judgment shall have the same force and effect as the originals.

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10. **AUTHORIZATION**

The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions of this Consent Judgment. Each Party warrants to the other that it is free to enter into this Consent Judgment and is not subject to any conflicting obligation that will or might prevent or interfere with the execution or performance of this Consent Judgment by said Party.

AGREED TO:

Date: 6/2/2025

By: [Signature]

Authorized Representative of APS&EE, LLC

AGREED TO:

Date: May 28, 2025

By: [Signature]

Authorized Representative of IOVATE HEALTH SCIENCES U.S.A. INC.

IT IS SO ORDERED.

Dated: _____

JUDGE OF THE SUPERIOR COURT